

# OSDBU UPDATE

VA OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION / JUNE 2002



## NOTES FROM SCOTT

From Flag Day, June 14, through Independence Day, July 4, we celebrate America's freedom. It is important to remember the many individuals

who sacrificed for our ideals. We often remember the contributions of our uniformed service members and veterans. We do not as often remember the contributions of American's small business owners, who developed the innovations that helped win our freedoms. This Independence Day, let's celebrate the ideal of small business ownership, with the social and economic equity it has brought to so many families.

Keeping with this spirit of patriotism, the House Small Business Committee conducted a roundtable on June 19 to explore the question, "**Are Government Purchasing Policies Failing Small Business?**" Looking at VA's recent trends in small business program accomplishments, ask yourself "**Are VA's Purchasing Policies Failing Small Business?**" In Fiscal Year 2001, VA, as an agency, failed to meet the Secretary's small business program goal in all of the 6 categories of prime contract performance measurement. For FY 2002 data reported through the end of May, all program measures were once again well below the Secretary's established performance threshold. They were also behind the accomplishment measures for last year at this time.

I've heard some VA leaders express the sentiment, "So what? Nothing will happen if I don't meet the goals." VA's Procurement Executive, Gary Krump, has a phrase that seems appropriate here - "What interests my boss, fascinates me." Secretary Principi

establishes the goals. On June 19, Dr. Roswell, VA's Under Secretary for Health, sent all facility and network directors a memorandum expressing his personal interest in supporting small businesses. In that memorandum, he stated a specific interest in VHA officials' plans for contracting with service-connected disabled veterans and veteran-owned small businesses. He states that the mission of VA is "to care for him who shall have borne the battle," and pledges that VA should be the "Government-wide leader" in contracting with veterans and service-disabled veterans. He also enclosed a comparative performance chart that clearly shows the networks that support small businesses and those that do not.

Unfortunately, VA is not the leader in contracting with service-disabled veterans. In FY 2001, three small agencies exceeded the 3% of total procurement dollars goal for service-disabled veterans. VA's performance was 0.2%. We spent only \$12 Million with this critical business population. In addition to the small agencies, we were outperformed by the Department of State, the Department of the Treasury and the Department of Defense.

People are noticing. In VA Central Office, an internal task force is studying ways to increase opportunities with veterans and service-connected disabled veterans for remaining FY 2002 requirements. This group was chartered last month when the May 2002 accomplishment numbers indicated the Department had spent **only \$2.9 Million with service-connected disabled veterans**. Our 3% dollar target, based upon FY 2001 total procurement dollars, is **\$176 Million**, with now three months remaining in this Fiscal Year. The Chairman of the House Veterans Affairs Committee sent a letter to VA on June 27 describing concerns expressed by several members of the Committee in a June 26 hearing on some proposed legislation. VA must now respond to the Chairman with a White Paper on our plans to improve opportunities for small, small disadvantaged,

and service-disabled veteran-owned businesses. This is what happens when VA fails to pay attention to the importance of small business. Legislation that we have an interest in may be impeded while we respond to members' concerns.

As we move into this holiday period, think about how you would respond to the Chariman's letter. What is your facility doing to keep open the doors of economic opportunity for veterans and for all small business owners?

**Veterans in Business – Still Serving America!**



**Scott Denniston**  
*Director*

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## **LEGISLATOR PROPOSES SUBCONTRACTOR PROTECTION**

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*By Jim Jackson, Senior Procurement Analyst*

U.S. Representative Albert R. Wynn (MD) has introduced H.R. 3637, "The Subcontractor Protection Act," to amend the Small Business Act to provide penalties for the failure of Federal prime contractors to subcontract with small businesses as described in their subcontracting plans, and establish penalties for prime contractors that fail to live up to their subcontracting plans for small disadvantaged business. The bill was forwarded to the House Committee on Small Business for consideration.

The bill would provide for withholding a specified amount or percentage of the total contract if the contractor does not achieve the percentage goal to use qualified small businesses. If enacted, the legislation would require Federal agencies awarding contracts to include a clause in their contracts providing for the withholding of not less than (i) \$5,000 in the case of a contract of \$100,000 or less; (ii) 3 percent in the case of a contract of more than \$100,000 and less than \$5 million, and (iii) 5 percent for contracts of \$5 million or more, if the contractor does not achieve the percentage goal for the use of small business concerns owned and controlled by socially and economically disadvantaged business individuals, as set forth in the subcontracting plan.

The bill would further provide that Federal agencies awarding contracts require contractors to provide written justification to the agency whenever the contractor, in performing the contract, does not enter into a subcontract with, or substitutes another subcontractor for, a specific small business concern identified in the subcontracting plan.

The proposed legislation also directs SBA to establish a telephonic or electronic means of communication access through which qualified small business concerns, identified in a subcontracting plan by a prime contractor, may communicate to SBA any concerns regarding major deviations by prime contractors from the use of small business concerns as subcontractors under the prime contract, as described in the subcontracting plan. ★

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## **FPDS STATUS REPORTS**

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*By Lisa Russell, Senior Procurement Analyst*

FPDS status reports are the 205 ICAR Error Report, the 117 ICAR Accepted Report, and the 117 SOCAR Accepted Report. These reports are provided the following workday after input of an FPDS report. When these reports are received at the facility, the individual responsible for each FPDS report should perform at least a cursory review of each individual entry to ensure that the basic data is correct. At a minimum, the 117 ICAR Accepted Report should be reviewed to ensure that the correct contracting office code, contract number, contractor name, dollar amount, type of contractor, women-owned small business, HUBZone small business, and veteran-owned small business fields are correct. An error in any of these fields, with the exception of the contract number and contractor name, can have an unfortunate impact upon your contracting activity's socioeconomic accomplishments.

This year several FPDS reports were submitted with dollar amounts in the tens of millions. This type of error is large enough that even one error can reduce the agency socioeconomic accomplishments by one percentage point. Because OSDBU is providing monthly rather than quarterly socioeconomic accomplishments, we are not manually correcting these errors on the OSDBU spreadsheets. As a result, our office has had

frequent inquiries from VACO officials regarding sudden drops in the dollar amounts reported after a contracting activity corrects these million dollar errors. An immediate review of the 117 ICAR Accepted Report by each individual responsible for an entry on that report would allow time to correct these errors before they arrive on the OSDBU spreadsheet.

Reviewing the socioeconomic fields on the 117 ICAR Accepted Report helps ensure that your contracting activity receives the appropriate credit in all the socioeconomic categories. Reviewing the contract number will reduce the probability of duplicate reporting and make it easier to submit correcting records and modifications at a later date.

Timely review and correction of the 205 ICAR Error Report is essential to ensure that entries on this report are corrected. Reports on the error file do not count toward your contracting activity's socioeconomic accomplishments. The date of the last change on this report is marked by each individual entry. A management official can use this information to determine if corrective action is performed within reasonable timeframes.

A final note – The primary filing location of the 117 ICAR Accepted Report for each individual entry is the contract or order file. If, for management or control purposes, it is desirable to create a centralized FPDS file, then that centralized file is the secondary filing location. The FPDS report is a contractual document generated as a result of the award of that contract action and belongs with the other contractual documents for that contract action. ★

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## **WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROGRAM, SET-ASIDE FACT OR FICTION?**

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*By Jim Dunning, Senior Procurement Analyst*

In December 2000, the SBA's Reauthorization Act (Public Law 106-554) established the Women-Owned Small Business Federal Contract Assistance Program. The Office of Federal Contract Assistance for Women

Business Owners (CAWBO) in the Office of Government Contracting at the U.S. Small Business Administration, established two months earlier, was given the responsibility for implementing the provisions of the law. The purpose of the office is to increase federal contracting opportunities for women-owned small business (WOSB) and to increase the number of WOSB that successfully compete in the federal marketplace.

The new program allows federal agencies to "restrict competition" when they solicit supplies or services from industries where women are "underrepresented" or "substantially underrepresented" in federal procurement. If two or more WOSB are expected to compete and the government expects to be able to make an award at a fair and reasonable price, they may set the procurement aside for women-owned businesses. Such contracts cannot exceed \$3 million for services or \$5 million in manufacturing. Congress directed SBA to conduct a study to identify the eligible industries.

The benchmark study is the linchpin in determining who qualifies for the set-aside. Under the two-tiered program set up by Congress, small firms owned by "economically disadvantaged" women will be eligible for set-aside contracts in industries where women are "underrepresented" in federal contracting. All women-owned small businesses will be eligible in industries where women are "substantially underrepresented." As part of the implementation effort, changes to the Federal Acquisition Regulations (FAR) and the Code of Federal Regulations (CFR) will include definitions of "economically disadvantaged," "underrepresented," and "substantially underrepresented," and will specify the process for certification, waivers, etc.

SBA has delayed implementation of WOSB set-asides after determining that their original study failed to prove that women have been the victims of discrimination. SBA also concluded that WOSB set-asides are vulnerable to legal challenge under the Supreme Court's 1995 Adarand decision. The Adarand decision limits affirmative action programs.

### WHY THIS NEW PROGRAM IS IMPORTANT?

In 1994, Congress enacted the Federal Acquisition and Streamlining Act (FASA) that, among other things, set a goal of 5 percent of federal contract dollars to be awarded to WOSB. This goal has never been achieved. In fact, the amount of federal contract dollars awarded to WOSB has never exceeded 2.5 percent. FASA did not establish any specific means by which the 5 percent could be achieved and it did not specify how the goal would be accounted to prime and subcontracting. Given the need for clarification and more action to reach at least 5 percent, Congress established this program as a tool the agencies may use to help achieve this goal. In FY 2000, WOSB won \$4.6 billion of the federal procurement dollars. During this time federal procurement grew nearly 8 percent, but contract dollars to WOSB were approximately the same as in FY 1999. Therefore, the percent awarded to WOSB fell to 2.3 percent from 2.5 percent.

### RESOURCES AVAILABLE TO ASSIST WOB IN FEDERAL PROCUREMENT

While it is not necessary to be certified to participate in federal contracting, it is a requirement to participate in certain special procurement programs. SBA has several procurement assistance programs that eligible WOSB are encouraged to use. Information about applicable criteria and procedures can be found on the website of each program. They are:

8(a) Business Development Program	<a href="http://www.sba.gov/med">http://www.sba.gov/med</a>
Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program	<a href="http://www.sba.gov/hubzone">http://www.sba.gov/hubzone</a>
Small Disadvantaged Business (SDB) Participation Program	<a href="http://www.sba.gov/sdb">http://www.sba.gov/sdb</a>

SBA also has 70 District Offices, over 900 Small Business Development Centers (SBDC), approximately 90 Women's Business Centers

(WBC) and six Area (procurement) Offices with a staff of experienced procurement specialists. For a complete list and the resources nearest you, go to [www.sba.gov](http://www.sba.gov) and search for programs and offices. Procurement assistance is available at [www.sba.gov/gc](http://www.sba.gov/gc).

All WOSB are encouraged to register in Central Contractor Registration (CCR) (<http://www.ccr.gov/>). Effective October 1<sup>st</sup>, 2002, CCR will become the Federal Government's single point of entry for vendor registration. We also encourage WOSB to register with SBA PRO-Net. Pro-Net is an on-line database that is searched by contracting officers and prime contractors to locate firms in particular industries and locations, often by type of ownership, e.g., WOSB. It is an excellent marketing tool for WOSB to gain instant and wide exposure to the federal contracting community. A firm can self-certify that it is small and that it is women-owned (meaning that at least 51 percent of the ownership and control is by women). A firm can also provide information about the services or supplies it provides plus a listing of awards or other favorable past performance information.

In addition, all WOSB seeking contracts or subcontracts are encouraged to search [www.WomenBiz.gov](http://www.WomenBiz.gov), which has over 100 links to procurement information. The website also has sections on Getting Started, Subcontracting, Agency Forecasting, and Mentor-Protégé Programs. It also includes contacts with the Small Disadvantaged Business Utilization Offices, the Women Business Advocates, the On-Line Women's Business Center and SBA's Procurement Center Representatives. ★

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### SMALL BUSINESS PROGRAM HIGHLIGHT OF REGULATORY GUIDANCE CONCERNING ORDER OF PROGRAM PRECEDENCE FAR PART 19

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*By Lynette Simmons, Procurement Analyst*

With many new contracting officers having joined VA in recent months, OSDBU wants to remind everyone of the current order of program precedence. Hopefully, this will help to assist everyone and eliminate any



confusion some of us have when determining which small business program to use. Please note that changes to the order of precedence are expected in light of SBA's ruling providing parity for the HUBZone and 8(a) Programs.

1. The Contracting Officer should consider 8(a) first. SBA will give priority to HUBZone 8(a) firms.

*FAR 19.800(e): Before deciding to set-aside an acquisition in accordance with Subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b) give first priority to HUBZone 8(a) firms.*

2. If the incumbent contractor is an 8(a) concern, the HUBZone Program cannot be used in a re-competition, unless SBA specifically authorizes the requirements for the program.

*FAR 19.1304(d): The HUBZone program does not apply to requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) program, unless SBA has consented to release the requirements from the 8(a) program.*

3. If the incumbent contractor is a small business, the HUBZone Sole Source procurement method cannot be used in a re-competition unless SBA specifically authorizes the Requirement for the program.

*FAR 19.1306(a)(3): A participating agency contracting officer may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides (see Subpart 19.5) provided the requirement is not currently being performed by a non-HUBZone small business concern.*

4. The HUBZone Program has priority over Small Business Set-Asides.

*FAR 19.501(c): For acquisitions exceeding the simplified acquisition threshold, the requirement to set-aside an acquisition for HUBZone small business concerns (see 19.1305) takes priority over the requirement to set-aside the acquisition for small business concerns.*

5. The HUBZone Program and the 8(a) Program are higher priority than the Small Business Competitiveness Demonstration Program (Emerging Small Business Set-Asides, Full and Open Competition).

*FAR 19.1007(b)(2): Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8) and the HUBZone Program (see Subpart 19.13).*

6. HUBZone Set-Aside Actions have higher priority than HUBZone Sole Source requirements.

*FAR 19.1305(a): The contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards (see Subpart 19.1306) or small business set-asides (see Subpart 19.5).*

7. HUBZone Competitive Set-Aside Program is optional under \$100,000.

*FAR 19.1305(c): A participating agency may set-aside an acquisition exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the contracting officer has a reasonable expectation that offers will be received from two or more HUBZone concerns; and award will be made at the fair market price.*

8. HUBZone sole source actions are prohibited under \$100,000.

*FAR 19.1306(a)(4) – A participating agency contracting officer may award contracts to a HUBZone small business concern on a sole source basis without considering small business set-asides (see Subpart 19.5), provided the acquisition is greater than the simplified acquisition threshold (see Subpart 13).*

9. Requirements under \$100,000 are automatically reserved for small business, except very small business set-asides and emerging small business set-asides have higher priority than small business set-asides.

FAR 19.502-2(a): Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns and shall be set-aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market price, quality and delivery.

10. The Emerging Small Business Set-Asides under the Small Business Competitive Demonstration program have higher priority than Very Small Business Set-Asides.

*FAR 19.904(a): A contracting officer must set-aside for very small business concerns each acquisition that has anticipated dollar value exceeding \$2,500 but not greater than \$50,000 if*

*(1) In the case of an acquisition for supplies the contracting officer is located within the geographical area served by a designated SBA district and there is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market price, delivery and quality; or*

*(2) In the case of an acquisition for services – the contract will be performed within the geographical area served by a designated SBA district and there is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, delivery and quality.*

11. Actions below \$2,500 and FAR 8 actions are exempt from the Small Business Program.

*FAR 19.502-1(b): This set-aside requirement does not apply to purchases of \$2,500 or less or purchases from required sources of supply under FAR Part 8 (e.g., Federal*

*Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule Contracts).*

**NOTE: ARCHITECT-ENGINEER:** The contracting officer can never use Sole Source HUBZone requirements; and under Competitive HUBZone, contracting officers must have 3 or more HUBZone firms. ★

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## SMALL DISADVANTAGED BUSINESS SET-ASIDES

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By: Ilene Waggoner, Senior Procurement Analyst

In the April 2002 issue of *The Update*, we reported that the Chairman and Ranking Member of the Senate Committee on Small Business and Entrepreneurship wrote a joint letter to SBA Administrator Hector Barreto asking SBA "revisit the issue" of the 6-year moratorium on SDB set-asides. The Clinton Administration, as a result of the Supreme Court's 1995 Adarand decision, suspended SDB set-asides.

Now comes word reported in the June 14, 2002, issue of the *Set-Aside Alert*, that Administrator Barreto has told Congress that SDB set-asides are unnecessary because those firms are receiving an increasing amount of contract dollars.

According to Administrator Barreto, non-8(a) SDBs received \$9.4 billion in FY 2001, compared to \$4.8 billion in FY 1995. When 8(a) SDBs are included, these figures increase to \$15.6 billion and \$12.5 billion, respectively. Combined, all SDBs received a total of 7.1% of all Federal procurement dollars, exceeding the statutory 5% goal.

In his reply to Senators Kerry (MA) and Bond (MO), Administrator Barreto cited a pending legal challenge to SDB set-asides, in which a Texas company is challenging an SDB set-aside program formerly used by the Defense Department. Although the Justice Department has sought to have this case dismissed, the plaintiff's attorney anticipates the case going to trial in late summer 2002. ★

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## IT DOESN'T STOP AT CONTRACT AWARD

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*By Lisa Russell, Senior Procurement Analyst*

By doing excellent market research and a small business set-aside, you have just awarded a nice contract, base year plus four option years, to a small business for a good-sized sum of money. Even better, it is a veteran-owned small business. You can picture those dollars every quarter being reported into the Federal Procurement Data System and anticipating how pleased you will be when you see the results of your actions in your contracting activity's socioeconomic accomplishments. You are, quite justifiably, feeling rather pleased with yourself for this considerable accomplishment and have mentally patted yourself on the back several times.

But your responsibilities to that small business do not stop with the award of the contract.

Keep in mind the requirement in FAR 1.602-2, Responsibilities, that contracting officers shall "...ensure that contractors receive impartial, fair, and equitable treatment; and (c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate." Note that it says that you shall ensure that contractors receive impartial, fair, and equitable treatment, not just that you alone will treat them impartially, fairly, and equitably. Then let us look at the responsibilities of the contracting officers to the small businesses awarded our contracts.

There is that little issue of payments – even better, timely payments of the correct amount. Just as your household runs on money and the Government runs on money, the small businesses run on money. Many of them can sustain a short term decreased cash flow from the Government's improper nonpayment of funds due them, but if the small business is due funds, it is the contracting officer's responsibility to be proactive in ensuring that they receive the funds due them, in accordance with the requirement in FAR 1.602-2 to treat them impartially, fairly, and equitably. Not all program offices view contractors impartially and fairly. Occasionally, a program office dislikes a contractor before the contractor

even begins performance, and continues to dislike the contractor regardless of how well the contractor performs. They refuse to certify payments and make specious arguments for the lack of payment certification. Your prompt action to resolve personality clashes between the program office and the small business is necessary in these instances and required by the FAR. It is also required by 5 CFR Sec. 1315.18, Inquiries. "... (c) Agency payments. Questions concerning delinquent payments should be directed to the designated agency office, or the office responsible for issuing the payment if different from the designated agency office. Questions about disagreements over payment amount or timing should be directed to the contracting officer for resolution. Small business concerns may obtain additional assistance on payment issues by contacting the agency's Office of Small and Disadvantaged Business Utilization." What form can your intervention take? For starters, if you know that the small business is due part of the money invoiced, take whatever action is necessary to get them paid the amount you know is due them. But by all means, keep an eye on the contracts where there is early evidence of personality clashes and intercede early before disagreements develop into outright animosity.

Small businesses are also entitled to special consideration in other types of payment issues. Borrowing from the 5 CFR 1315, here are some definitions important to contract payments.

**Contract financing payments** means an authorized disbursement of monies prior to acceptance of goods or services including advance payments, progress payments based on cost, progress payments (other than under construction contracts) based on a percentage or stage of completion, payments on performance-based contracts and interim payments on cost-type contracts (other than under cost-reimbursement contracts for the acquisition of services). Contract financing payments do not include invoice payments, payments for partial deliveries, or lease and rental payments. Contract financing payments also do not include progress payments under construction contracts based on a

percentage or stage of completion and interim payments under cost-reimbursement service contracts.

**Recurring payments** means payments for services of a recurring nature, such as rents, building maintenance, transportation services, parking, leases, and maintenance for equipment, pagers and cellular phones, etc., which are performed under agency-vendor agreements providing for payments of definite amounts at fixed periodic intervals.

**Invoice** means a bill, written document or electronic transmission, provided by a vendor requesting payment for property received or services rendered.

**Contract financing payment** is essentially a form of advance payment. VA does not traditionally use this payment method; however, if used, there are special considerations given to small businesses. There is some preliminary work required in the solicitation phase to make contract financing payments.

41 USC 255 provides that, "Any executive agency may-- (1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and (2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

FAR 32.104(b), Providing contract financing, states that, "If the contractor is a small business concern, the contracting officer must give special attention to meeting the contractor's contract financing need..."

FAR 32.104(d), Providing contract financing, states that, "...the contracting officer may provide contract financing in the form of performance-based payments (see Subpart 32.10) or customary progress payments (see Subpart 32.5) if the following conditions are met: ... (3) If the contractor is a small business concern -- (i) For an individual contract, the contract price exceeds the simplified acquisition threshold; or (ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the

aggregate value of orders of contracts to exceed the simplified acquisition threshold."

FAR 32.5, Progress Payments Based on Costs, covers progress payments for other than cost-reimbursement contracts or contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion. The customary progress payment rate provided in FAR 32.501-1, Customary progress payment rates, is 80 percent applicable to the total costs of performing the contract. However, the customary rate for contracts with small business concerns is 85 percent. Also, under the authority of FAR 32.101, an invitation for bids may restrict the availability of progress payments to small business concerns only. A special provision, FAR 52.232-14, Notice of Availability of Progress Payments Exclusively for Small Business Concerns, is used in this situation. When customary progress payments based on costs are authorized and the contractor is a small business, FAR 52.232-16, Progress Payments, with Alternate I is used.

FAR 32.107(b), Need for contract financing not a deterrent, provides that as long as a contractor or offeror meets the standards prescribed for responsible prospective contractors at 9.104, the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award or as a responsibility factor or evaluation criterion. Additionally, the contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

Are you and your Fiscal Service operating under the belief that payment should be made as late as possible to the due date in order to maximize the use of funds? 5 CRF 1315.5, Accelerated payment methods, provides for the following:

A single invoice under \$2,500. Payments may be made as soon as the contract, proper invoice, receipt and acceptance documents are matched except where statutory authority prescribes otherwise and except where otherwise contractually stipulated



(e.g., government-wide commercial purchase card.) Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

Small business (as defined in FAR 19.001 (48 CFR 19.001)). Agencies may pay a small business as quickly as possible, when all proper documentation, including acceptance, is received in the payment office and before the payment due date. Such payments are not subject to payment restrictions stated elsewhere in this part.

Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

Does your small business contractor owe the Government funds? FAR 32.613(e), Deferment of collection, permits deferment pending disposition of an appeal of the debt to small business concerns with a reasonable balance of the need for Government security against loss and undue hardship on the contractor.

Are you debating whether or not to hold a postaward orientation conference? FAR 42.502. Selecting contracts for postaward orientation requires that contracting officers consider the contractor's status as a small business when deciding if a postaward orientation conference is necessary.

Has your small business contractor written you concerning a contract administration issue, excluding a request for a decision under the Contract Disputes Act of 1978? FAR 42.16, Small Business Contract Administration requires that the contracting officer make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. If the contracting officer cannot provide an answer within this time frame, then the contracting officer shall, within the 30 day period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. Notice the distinction in the two preceding sentences. It is obvious that the term "to respond" means to provide a satisfactory and reasonable answer, not a postponement of the answer.

Are you considering terminating a small business for default? FAR 49.402-3(e)(4), Procedure for default, requires that the contracting officer immediately provide a copy of any cure notice or show cause notice to the contracting office's small business specialist and the Small Business Administration Regional Office nearest the contractor. The contracting officer should also consult with the small business specialist before proceeding with a default termination.

Of all these issues, untimely payments or lack of payments are without a doubt the most troubling issues small businesses face after a VA contracting officer awards a contract. Our inattention to this issue can make or break a good small business. Individuals in using services have been known to say that they did not have time to certify an invoice, while that same individual would be absolutely indignant if a VA employee did not have time to perform timekeeper functions or certify their timecard. They make no connection between withholding unjustified and excessive contractor funds, but would be livid if the same action was taken with their personal salary. An Administrative Law Judge (ALJ) on the VA's Board of Contract Appeals stated that when using service officials know they will have to explain in front of an ALJ why they withheld payments or excessive funds, they frequently certify invoices for those same amounts in order to avoid making those specious arguments. If, for political reasons, it is difficult to certify the invoice yourself or force the issue with the using service, encourage the small business contractor to seek Alternative Disputes Resolution as a means of inserting a neutral third party into the issue. However, the key thing to remember is that it is your responsibility as a contracting officer to ensure that it never reaches that point. ★

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### **DEVIATION TO VAAR 819.502-70**

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*By Deborah A. Van Dover, Senior Procurement Analyst*

Recent messages across the VA Acquisition Group highlight the need to address the deviation to VAAR 819.502-70, dated November 8, 1999. This review of the requirements will hopefully eliminate any confusion as to when a VA Form 2268, Small

Business Program Review, is required and the approval requirements.

Specifically, the deviation to VAAR 819.502-70, states the contracting officers must process VA Form 2268 in accordance with the following instructions:

- (a) Requirements from Sources Listed in FAR 8.001(a), Priorities for Use in Government Supply Sources: No form is required.
- (b) Requirements at or below the micro-purchase limitation: No form is required.
- (c) Requirements above \$2,500 and below \$100,000: No form is required when the contracting officer utilizes small business programs. If a small business program is not used, the contracting officer must complete the form. The form must be submitted to the Procurement Center Representative (PCR) (when assigned), or to the Head of the Contracting Activity (HCA) for approval.
- (d) Requirements above \$100,000 and below \$500,000:
  - (1) Central Office: The contracting officer must submit the form to the Director, OSDBU.
  - (2) Field Facilities: The contracting officer must submit the form to the facility Small Business Administration PCR or to the HCA when there is no PCR at the facility.
- (e) Requirements above \$500,000: The contracting officer must submit the form to the PCR or, if no PCR is assigned to the facility, to the Director, OSDBU.

Please note that the assignment of a PCR to a VA Facility is a formal arrangement, with the assignment made at the SBA Headquarters in Washington, DC. ★

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## VA's HUBZONE OUTREACH INITIATIVE COMPLETED

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By: Wayne Simpson, Deputy Director  
/Small Business Programs

During an acquisition training forum in New Orleans last summer, several VA contracting officers mentioned that they suspected their facilities were using firms that are located in HUBZones and who are probably unaware of the HUBZone Program. Local resources do not allow for outreach efforts to notify these firms of the program and their potential eligibility.

Shortly after hearing the contracting officers' concerns, OSDBU began a HUBZone Outreach Initiative targeting VA contractors and vendors. Under this outreach initiative, OSDBU obtained from VA's Financial Management System a record of all contractors and vendors paid during the preceding 18-month period. Using this information and the National Bureau of Standards and Technology's web site to obtain named places by state and zip code, OSDBU wrote to each vendor with a zip code that was potentially located in a eligible non-metropolitan county or census tract to alert the firm of the possibility that they may be HUBZone-eligible.

Approximately 182,000 HUBZone outreach letters were sent to vendors. Nearly 20,000 of these letters were returned as undeliverable, with 89% reaching the addressees. During the six-month period between January 14, 2002 and June 14, 2002, 643 new firms were HUBZone-certified by SBA, bringing the total to 5,187 firms, an increase of approximately 12%.

Of the 643 newly certified HUBZone small businesses, 46 companies, approximately 7%, received letters from VA alerting them to their HUBZone eligibility and may be attributable to the outreach effort.

OSDBU partnered with Veterans Industries at the Washington, DC, VA Medical Center for this initiative. Veterans Industries photocopied and assembled letters and envelopes for mailing. Total cost of the outreach initiative, including first-class postage was nearly \$78,000. OSDBU will have

to assess the feasibility of future HUBZone Outreach Initiatives given the return on the original efforts. ★

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## **SUBCONTRACTING PLANS: A CRUCIAL REQUIREMENT AND TOOL**

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*By: Jim Jackson, Senior Procurement Analyst*

**N**ot only are subcontracting plans required for large businesses receiving contract awards of \$500,000 or more (\$1 million or more for construction), they are an invaluable tool for contracting officers to measure socioeconomic goal attainment by prime contractors. Without it, contracting officers would be left with a prime contractor's vague intentions and often empty promises to provide sufficient subcontracting opportunities to small business concerns.

Large business prime contractors must submit an acceptable subcontracting plan at the dollar thresholds shown above before contract award. Failure of bidders/offers to submit an acceptable subcontracting plan within the time limit specified by the contracting officer renders the bidder/offers ineligible for award (ref: FAR 19.702; 52.219-9). Contracting officers have the final say in terms of formal acceptance, but subcontracting plans are reviewed by VA's Office of Small and Disadvantaged Business Utilization (OSDBU) or SBA's Procurement Center Representative, if one is assigned to the contracting activity, before acceptance of the subcontracting plan or contract award by the contracting officer.

An acceptable subcontracting plan includes maximum practicable opportunities for small business, service-disabled veteran-owned small business, veteran-owned small business, small disadvantaged business, women-owned small business and HUBZone small business concerns. Contracting officers

should ensure that all goals contained in subcontracting plans meet the statutory minimum goals for each category: 23% for small business; 5% for small disadvantaged business; 3% for service-disabled veteran-owned small business; 5% for women-owned small business; and 2.5% for HUBZone small business concerns (increases to 3% effective October 1, 2002). Although there is no statutory goal for veteran-owned small businesses, and the Government-wide goal is "best effort," be mindful that the Secretary of Veterans Affairs establishes a 7% goal for VA in this important category.

Contracting officers also have post award responsibilities with subcontracting plans. They are responsible for reviewing Standard Forms 294 and 295 to ensure required information, goals and assurances are included (ref: FAR 19.704). In addition, contracting officers are responsible for monitoring and determining whether prime contractors are complying with the subcontracting plans they submitted and are making a good-faith effort to meet or exceed the negotiated subcontracting goals, to include, evaluating and documenting contractor performance and compliance with the subcontracting plan (ref: FAR 19.706).

Samples of acceptable subcontracting plans and assistance may be obtained from the OSDBU Procurement Analyst for your contracting activity, Ms. Lynette Simmons, at 202.565-8136 or Ms. Deborah Van Dover, at 202.565.7795, respectively. ★

## **UPCOMING CONFERENCES**

July 9, 2002  
Operation Opportunity  
San Diego Supplier Development Council  
**San Diego, CA**  
For More Information  
(858) 637-4911  
★

July 17, 2002  
Alabama Transportation Marketplace  
**Birmingham AL**  
For More Information  
(202) 366-5344  
★

July 10-13, 2002  
National Minority Supplier Development  
Council of Florida, Inc.  
19<sup>th</sup> Annual Trade Fair  
**Orlando, FL**  
For More Information  
(407) 245-6062



July 31, 2002  
ProBiz 2002  
**Washington, DC**  
For More Information  
(202) 722-2465



August 6, 2002  
Indiana Government Procurement  
Conference  
**Hammond, IN**  
For More Information  
(219) 762-8644



August 7, 2002  
Congressman Jim Turner  
Procurement Conference Expo 2002  
Angelina College Procurement Assistance  
Center  
**Lufkin, Texas**  
For More Information  
(936)-633-5432



September 4-5, 2002  
Entrepreneurial Women's Conference  
**Chicago, IL**  
For More Information  
(312) 853-3477 Ext. 45



September 24-27, 2002  
MED Week 2002 Conference  
**Washington, DC**  
For More Information  
[www.medweek.gov](http://www.medweek.gov)

#### **Remember!!**

OSDBU can provide you with handout information such as diskettes or brochures. Please contact Ilene Waggoner at 202-565-8127 or [ilene.waggoner@mail.va.gov](mailto:ilene.waggoner@mail.va.gov) if you would like items sent to you.

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### **YOUR OSDBU TEAM**

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